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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

IAN OTTOWELL, R.C.P.
233 Via Ballena
San Clemente, CA 92672

Respiratory Care Practitioner License No. 5842

Respondent.

Case No. 1H-2007-718

OAH No.

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 17, 2008, Complainant Stephanie Nunez, in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs, filed Accusation No. 1H-2007-718 against IAN OTTOWELL, R.C.P. (Respondent) before the Respiratory Care Board.

2. On or about June 28, 1985, the Respiratory Care Board (Board) issued Respiratory Care Practitioner License No. 5842 to Respondent. The Respiratory Care Practitioner License expired on February 29, 2008, and has not been renewed.

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1 3. On or about July 17, 2008, Andrea Pina, an employee of the Board, served
2 by Certified Mail and Regular Mail, a copy of Accusation No. 1H-2007-718, Statement to
3 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
4 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is
5 233 Via Ballena, San Clemente, CA 92672. A copy of the Accusation, the related documents,
6 and Declaration of Service are attached as Exhibit A, and are incorporated herein by reference.

7 4. Service of the Accusation was effective as a matter of law under the
8 provisions of Government Code section 11505, subdivision (c).

9 5. On or about August 11, 2008, the aforementioned documents were
10 returned by the U.S. Postal Service. A copy of the envelope returned by the post office is
11 attached as Exhibit B, and is incorporated herein by reference.

12 6. On or about August 6, 2008, counsel for Complainant, Deputy Attorney
13 General Douglas Lee, sent respondent by Overnight Mail, a copy of the Accusation, the related
14 documents and Declaration of Service. Attached as Exhibit C is a copy of the cover letter,
15 Federal Express Airbill, and a printout from the Federal Express website showing that the
16 package was delivered to respondent's address on August 7, 2008.

17 6. Business and Professions Code section 118, subdivision (b), states:
18 "The suspension, expiration, or forfeiture by operation of law of a license
19 issued by a board in the department, or its suspension, forfeiture, or cancellation
20 by order of the board or by order of a court of law, or its surrender without the
21 written consent of the board, shall not, during any period in which it may be
22 renewed, restored, reissued, or reinstated, deprive the board of its authority to
23 institute or continue a disciplinary proceeding against the licensee upon any
24 ground provided by law or to enter an order suspending or revoking the license or
25 otherwise taking disciplinary action against the license on any such ground."

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1 7. Government Code section 11506, subdivision (c), states:

2 "The respondent shall be entitled to a hearing on the merits if the
3 respondent files a notice of defense, and the notice shall be deemed a specific
4 denial of all parts of the accusation not expressly admitted. Failure to file a notice
5 of defense shall constitute a waiver of respondent's right to a hearing, but the
6 agency in its discretion may nevertheless grant a hearing."

7 8. Respondent failed to file a Notice of Defense within 15 days after service
8 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
9 Accusation No. 1H-2007-718.

10 9. California Government Code section 11520, subdivision (a), states:

11 "If the respondent either fails to file a notice of defense or to appear at the
12 hearing, the agency may take action based upon the respondent's express
13 admissions or upon other evidence and affidavits may be used as evidence without
14 any notice to respondent."

15 10. Pursuant to its authority under Government Code section 11520, the Board
16 finds Respondent is in default. The Board will take action without further hearing and, based on
17 Respondent's express admissions by way of default and the evidence before it, contained in
18 Exhibits A, B, C, and D, finds that the allegations in Accusation No. 1H-2007-718 are true.

19 11. The Respiratory Care Board further finds that pursuant to Business and
20 Professions Code section 3753.5, the costs of investigation and enforcement of the case prayed
21 for in the Accusation total \$2172.50, based on the Certification of Costs contained in Exhibit D.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, respondent has subjected his Respiratory Care Practitioner License No. 5842 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Respiratory Care Board is authorized to revoke Respondent's Respiratory Care Practitioner License based upon the following violations alleged in the Accusation:

a. On or about January 30, 2008, respondent was convicted of violating Vehicle Code section 23153, subdivision (a) [driving under influence of alcohol causing bodily injury], in violation of Business and Professions Code sections 3750, subdivisions (d) and (g), 3752, and 3752.5; and,

b. On or about October 30, 2006, respondent was convicted of violating Penal Code section 273.5, subdivision (a) [domestic battery with corporal injury], in violation of Business and Professions Code sections 3750, subdivisions (d) and (g), 3752, and 3752.5.

5. Respondent is hereby ordered to pay the above costs of investigation and enforcement of this action.

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1 ORDER

2 IT IS SO ORDERED that Respiratory Care Practitioner License No. 5842,
3 heretofore issued to Respondent IAN OTTOWELL, R.C.P., is revoked.

4 Respondent is ordered to reimburse the Respiratory Care Board the amount of
5 \$2172.50 for its investigative and enforcement costs. The filing of bankruptcy by Respondent
6 shall not relieve Respondent of his responsibility to reimburse the Board for its costs.
7 Respondent's Respiratory Care Practitioner License may not be renewed or reinstated unless all
8 costs ordered under Business and Professions Code section 3753.5 have been paid.

9 Pursuant to Government Code section 11520, subdivision (c), Respondent may
10 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
11 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
12 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
13 statute.

14 This Decision shall become effective on October 15, 2008.

15 It is so ORDERED September 15, 2008

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17 Original signed by:

18 LARRY L. RENNER, BS, RRT, RCP, RPFT
19 PRESIDENT, RESPIRATORY CARE BOARD
20 DEPARTMENT OF CONSUMER AFFAIRS
21 STATE OF CALIFORNIA

22 Attachments:

23 Exhibit A: Accusation No.1H-2007-718, Related Documents, and Declaration of Service
24 Exhibit B: Copy of Envelope Returned by Post Office
25 Exhibit C: Letter to respondent, Federal Express Airbill, Federal Express Delivery
Confirmation
26 Exhibit D: Certification of Costs: Declaration of Douglas Lee
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